

CONTRACT

This contract (the "Contract") entered into this ____ day of _____, 2008, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and SHELBY COUNTY SCHOOLS, hereinafter referred to as "THE CONTRACTOR" for the purpose of providing an understanding between the parties as it relates to the parties' responsibilities relative to the "Shelby County Schools Diesel Retrofit School Bus Project," hereinafter referred to as "the Project" which is the subject of attached Exhibit "A", hereinafter referred to as "the Funding Agreement".

WITNESSETH

WHEREAS, on November 30, 2007, "the Funding Agreement," Project Identification Number (PIN) 109516.00 in the amount of \$400,000, was entered into between the State of Tennessee Department of Transportation and Shelby County Government; and

WHEREAS, the "Scope of Work" outlined in that Agreement relates to the retrofitting of 294 Shelby County School's buses with Diesel Oxidation Catalysts and Closed Crankcase Ventilation Systems (hereinafter "the Project"); and

WHEREAS, a "Request for Proposal" (hereinafter RFP) will be issued for implementation of the project and a total project cost will be determined through said successful RFP process; and

WHEREAS, the "Funding Agreement" provides that the funding for "the Project" will be provided 20% by the Memphis and Shelby County Health Department and 80% by the State of Tennessee Department of Transportation via reimbursement to the Memphis and Shelby County Health Department; and

WHEREAS, the purpose of this Agreement is to memorialize the Agreement of Shelby County Government to reimburse Shelby

County Schools through PIN 109516.00 for all expenditures, costs, parts and labor associated with "the Project", not to exceed that amount determined by the Project Budget, as determined through a successful RFP process.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. SCOPE OF WORK

1. SCS agrees to issue a RFP and select a sub-contractor to supply said parts for the project and pay said sub-contractor.
2. SCS agrees to provide oversight and management of the retrofit project.
3. SCS agrees to provide MSCHD with all necessary documentation and assurances that may be required by the State to effect reimbursement of said funds expended in accordance with this agreement and TDOT PIN 109516.00.
4. The project may be broken into phases not to exceed three and billing will be processed after the completion of each phase. SCS is to inform MSCHD of their decision regarding phased implementation and billing.
5. SCS shall have sole discretion in determining whether to provide its own employees to provide the labor associated with the Project or to secure a sub-contractor to provide said services.

II. TERM AND COMPENSATION

1. Shelby County Government through the MSCHD hereby agrees to provide Shelby County Schools with funds in the amount equal to 20% of the successful bid as determined by the RFP process. Shelby County Government further agrees that within thirty (30) days of completion of each phase of "the Project" it will submit the required paperwork to TDOT to activate the reimbursement of funds to Shelby County

Schools as outlined in the Scope of Work under the TDOT contract associated with "the Project".

2. As is provided in "the Funding Agreement", "the Project" will be supervised by a full-time employee of Shelby County Schools.
3. Shelby County Schools would not be participating in "the Project" but for Shelby County Government's agreement to reimburse Shelby County Schools for all expenditures, costs, parts and labor associated with "the Project". Shelby County Government agrees and understands that it shall act in the best interest of SCS to effect reimbursement for all approved costs of the project.
4. If any provision of this Agreement is held invalid, that portion of the Agreement that is held invalid shall be elided and the balance of the Agreement shall remain intact and enforceable.

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the CONTRACTOR will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY.

2. CONTRACTOR'S PERSONNEL

The CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this Contract and/or that it can secure the services of a qualified sub-contractor to perform said services. All work performed during the Term of this Contract will be supervised by the CONTRACTOR. Any employee of the CONTRACTOR who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to "the Project", shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that the CONTRACTOR, or any of the CONTRACTOR's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that the CONTRACTOR will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.
- b. It is further expressly agreed and understood by CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONTRACTOR has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONTRACTOR for the Services performed shall be on the CONTRACTOR's letterhead.

4. REPORTS

CONTRACTOR shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds, inclusive of specific Services delivered through all phases of the project. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - i) Either the CONTRACTOR or any of its principals, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
- b. Notwithstanding the above or any section herein to the contrary, CONTRACTOR shall not be relieved of liability to the COUNTY and the COUNTY shall not be relieved of liability to the CONTRACTOR for damages sustained by either party by virtue of any breach of the Contract.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONTRACTOR pursuant to this Contract for any CONTRACTOR's Services performed by the CONTRACTOR in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONTRACTOR to properly fulfill any of its obligations as set forth in this Contract.

7. CONFLICT OF INTEREST

The CONTRACTOR covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONTRACTOR warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the CONTRACTOR in connection with any work contemplated or performed relative to this Contract.

8. EMPLOYMENT OF COUNTY WORKERS

The CONTRACTOR will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

9. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONTRACTOR agrees to permit duly authorized agents and employees of the COUNTY to enter CONTRACTOR's offices for the purpose of inspections, reviews and audits pertaining to "the Project" during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONTRACTOR will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

10. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. The COUNTY has no obligation to provide legal counsel or defense to CONTRACTOR or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- b. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- b. CONTRACTOR shall immediately notify the COUNTY of any claim or suit made or filed against CONTRACTOR or its subcontractors regarding any matter resulting from or relating to CONTRACTOR's performance of the Services

under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

11. NON-DISCRIMINATION

The CONTRACTOR hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONTRACTOR on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONTRACTOR shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

12. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

13. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

14. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

15. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

16. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

17. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of Congestion Management and Air Quality (CMAQ) funds by the Federal Highway Administration (FHWA) through Tennessee Department of Transportation (TDOT) and Shelby County Government. In the event sufficient funds for this Contract are not appropriated by FHWA, TDOT, or Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONTRACTOR shall be entitled to receive just and equitable compensation for any work performed and materials purchased as of the Termination Date.

18. NON-LIABILITY FOR CONTRACTOR EMPLOYEE TAXES

Neither CONTRACTOR nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONTRACTOR's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from CONTRACTOR's payments;
- b. Making state or federal unemployment insurance contributions on behalf of CONTRACTOR or its personnel;
- c. Withholding state and federal income tax from payment to CONTRACTOR;
- d. Making disability insurance contributions on behalf of CONTRACTOR;
- e. Obtaining workers' compensation insurance on behalf of CONTRACTOR or CONTRACTOR's personnel.

19. INCORPORATION OF OTHER DOCUMENTS

- a. CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONTRACTOR thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.
- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

20. RIGHT TO REQUEST REMOVAL OF CONTRACTOR'S EMPLOYEES

The COUNTY may interview the personnel CONTRACTOR assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONTRACTOR, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONTRACTOR shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

21. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

22. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONTRACTOR, CONTRACTOR understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONTRACTOR due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

23. ORGANIZATION STATUS AND AUTHORITY

- a. CONTRACTOR represents and warrants that it is validly existing and in good standing under the laws of the State of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business.
- b. The execution, delivery and performance of this Contract by the CONTRACTOR has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONTRACTOR, any provision of any indenture, agreement or other instrument to which CONTRACTOR is a party, or by which CONTRACTOR's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

24. INSURANCE REQUIREMENTS

- a. The CONTRACTOR shall require its subcontractors to purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims

which may arise out of or result from the subcontractor's operations under the Contract, whether such operations are performed by itself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the subcontractor may be liable.

- c. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. The subcontractor will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:

- i) Errors and Omissions/or Professional Liability coverage with limits of \$1,000,000.00 per occurrence/\$2,000,000.00 annual aggregate for this contract.
- ii) Commercial General Liability coverage with minimum limits of \$1,000,000.00 per occurrence/\$2,000,000.00 annual aggregate premises/operations coverage, \$2,000,000.00 annual aggregate products/completed operations.
- iii) Commercial Auto Liability with minimum limit of \$1,000,000.00 for all owned, hired and non-owned autos.

- c. CONTRACTOR shall provide County with a current copy of the Certificate of Insurance at the time of subcontracting and shall see that said insurance is maintained during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government
Purchasing Department
160 N. Main, Suite 550
Memphis, TN 38103

- d. Upon termination or cancellation of insurance currently in effect under this Contract, the CONTRACTOR shall purchase an extended reporting

endorsement and furnish evidence of same to the County.

25. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Memphis and Shelby County Health Department
Air Quality Improvement Branch,
814 Jefferson 4th floor
Memphis, Tennessee 38105
Attn.: Lawrence J. Smith, Supervisor

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

CONTRACTOR: Shelby County Schools
Dr. Bobby G. Webb, Superintendent
160 South Hollywood Street
Memphis, TN 38112

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED:

SHELBY COUNTY GOVERNMENT

Contract Administrator/
Assistant County Attorney

A C Wharton, Jr., Mayor

Shelby County Schools of Tennessee

BY: *H. Richard Holden*

TITLE: Chief of Operations